VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $5.4 billion in 2005, an increase of $1.3 billion from $4.1 billion in 2004. U.S. goods exports in 2005 were $1.2 billion, up 2.4 percent from the previous year. Corresponding U.S. imports from Vietnam were $6.6 billion, up 25.7 percent. Vietnam is currently the 58th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam in 2004 was $241 million, up from $218 million in 2003.

WTO ACCESSION NEGOTIATIONS

The United States continued WTO accession negotiations with Vietnam, seeking a strong commercial package. Progress was made in January 2006 when the two teams met in Hanoi and the gaps were further narrowed during meetings in March 2006 in Geneva. The U.S. Government hopes to conclude the bilateral track of the accession negotiations shortly, opening up Vietnam's markets to U.S. goods, agriculture and services exports and investment. We also are working to conclude the multilateral track of negotiations, which focus on WTO rules issues including agriculture, customs, intellectual property rights, standards, subsidies, treatment of state-owned enterprises, trading rights, and services.

IMPORT POLICIES

Tariffs

Vietnam's tariff schedule has been based on the ASEAN Harmonized Tariff Nomenclature (AHTN) system since September 1, 2003. Within this structure, Vietnam maintains fifteen tariff rate bands, resulting in a simple average Most-Favored-Nation tariff rate of 18.2 percent. Currently, there are three categories of tariff rates: MFN rates that apply to about 75 percent of total imports from about eighty countries that have bilateral trade agreements with Vietnam, including the United States; Common Effective Preferential Tariff (CEPT) rates that apply to imports from ASEAN countries that qualify under the ASEAN Free Trade Agreement (AFTA); and general tariff rates (50 percent higher than NTR/MFN) that apply to all other countries.

Under the terms of the U.S.-Vietnam Bilateral Trade Agreement (BTA), which entered into force on December 10, 2001, Vietnam significantly reduced tariffs by an average of about one-third to one-half on a broad range of imports from the United States (approximately 244 lines) over a period of three years ending on December 10, 2004. Tariff reductions under the BTA apply to imported goods having certificates of origin from the United States. Some other countries with whom Vietnam has an MFN agreement also enjoy these rates.

The National Assembly retains authority over setting tariff bands for each product and the government is free to adjust applied tariffs within the bands. In an effort to improve transparency, tariff information is now available on the Vietnam Customs website (www.customs.gov.vn). The website provides general tariff, NTR/MFN, and ASEAN/CEPT rates, but not lower rates that may have been negotiated in other bilateral agreements.

Non-tariff barriers

Non-tariff barriers (NTBs) were introduced in Vietnam when the country shifted from a centrally-controlled economy toward more market-oriented trade in the late 1980s to early 1990s, and quickly became a key component of Vietnam's trade policy. In the past few years, Vietnam has made significant progress in reducing the use of NTBs.

Under the terms of the BTA, Vietnam agreed to eliminate all non-tariff barriers, including import and export restrictions, quotas, licensing requirements, and controls for all product and service categories over a period of three to seven years, depending on the product.

Import prohibitions: Vietnam currently prohibits the commercial importation of the following products: arms and ammunition; explosive materials (not including industrial explosives); military technical equipment and facilities; equipment that interferes with traffic speed measuring devices; prohibited cultural products, firecrackers; a wide range of second-hand consumer goods including used information technology products; right-hand drive motor vehicles; used chassis, motors, spare parts and tires for automobiles and motorized two- and three-wheeled vehicles; used internal combustion engines; used bicycles; used motorized two- and three-wheeled vehicles; used ambulances; automobiles with modified transmission or altered chassis; engine identification numbers; waste materials; garbage; refrigeration equipment using Cluro Fluro Carbons; asbestos materials under the amphibole group; various encryption devices; encryption software; and toxic chemicals identified by the Chemical Weapons Convention. Under Decree 12/2006/ND-CP dated January 23, 2006, Vietnam's previous prohibition on the importation of motorcycles with engine capacity exceeding 175 cubic centimeters is no longer listed. Instead this product is now listed in the annex of goods that can be imported with a license from the Ministry of Trade. The Ministry of Public Security has the responsibility to determine who can register and use such motorcycles, and importation is allowed only for special purposes such as for the armed forces, security personnel, or for competitive sports. One U.S. motorcycle manufacturer has been seeking removal of this import prohibition in order to gain access in the near term to an estimated $5 million in potential exports with good long term growth potential. Other items that were previously listed on the prohibition list such as narcotics, toys, and cigarettes have been moved to the list of goods to be managed/licensed by various ministries. Vietnam plans to lift its previous ban on used passenger automobiles that are less than five years old beginning March 2006, possibly under a quota system.

Quantitative restrictions and non-automatic licensing: Vietnam has been phasing out the use of quantitative restrictions on imports. An April 2001 Decision of the Prime Minister on export-import management for the period from 2001 to 2005 phased out quantitative restrictions on imports with the exception of sugar (which was eliminated in 2005). A September 2003 government decision established conditions for importing and re-exporting petroleum.

This trading is subject to annual licensing and price regulation. Quantitative limitations on exports in most sectors have been eliminated, with the exception of textiles and garments, in accordance with the U.S.–Vietnam agreement on textiles and clothing, and a list of sensitive items. Decree 12/2006/ND-CP is the new export-import management plan for 2006 and beyond, implementing the new Commercial Law of June 14, 2005.

In May 2003, the Prime Minister issued a decision to implement tariff-rate quotas (TRQs) on certain agricultural products that were not previously under quotas. From January 2004, TRQs applied to cotton, raw tobacco, salt, milk, condensed milk, corn, and chicken eggs. In March 2005, the Government removed cotton, milk, condensed milk, and corn from the list of items subject to TRQs. The remaining items subject to TRQs are raw tobacco, salt, eggs, and raw and refined sugar, and apply to all non-ASEAN member countries. In practice, however, only salt and raw tobacco imports are currently restricted by quotas. Currently all companies are required to apply for import licenses in order to import unregistered foreign pharmaceutical products.

Special authority regulation: Previously, importers required approval from the relevant ministries to import many goods, but this system changed in 2001. Now, ten ministries and agencies are responsible for overseeing a system of minimum quality and performance standards for animal and plant protection, health safety, local network compatibility (in the case of telecommunications), money security, and cultural sensitivity. Goods that meet the minimum standards can be imported upon demand and in unlimited quantity and value.

Foreign exchange system: Vietnam has adopted a crawling peg with the U.S. dollar for its exchange rate. The State Bank of Vietnam (SBV) sets the official exchange rate daily, and commercial banks set their dealing rate within a trading band of plus or minus 0.25 percent. The SBV tends to keep the Dong depreciated against the U.S. dollar by keeping the exchange rate on an upward trend.

Customs: Under the terms of the BTA, Vietnam was obligated by December 2003 to apply transaction value for U.S. imports and to ensure that no administrative fee or charge imposed by customs authorities in connection with importing or exporting any good exceeds the actual cost of the service provided by Customs. In June 2002, the government issued Decree 60 establishing rules for customs valuation based on transaction value, in accordance with WTO principles. Subsequently the Ministry of Finance issued Circular 118 in December 2003, implementing the provisions of Decree 60, as well as Circular 87 in August 2004, abolishing the use of all minimum import prices. Vietnam also committed to apply transaction values to imports from ASEAN countries as well as 56 other countries on the basis of reciprocity. These changes have significantly improved customs valuation in Vietnam over the last year. However, the application of Customs Valuation Agreement principles is not entirely uniform and importers complain about the low level of automation of Vietnam's customs system. A revised Customs Law took effect on January 1, 2006, to address remaining problems and facilitate implementation of a $70 million World Bank-supported customs modernization project in Vietnam.

Following a July 2005 decision by the Prime Minister to implement e-customs procedures that meet both regional and international standards, the Ho Chi Minh City Customs Office began a pilot electronic customs service in early October 2005. Processing time between submission of customs declarations and receipt of approval is less than two minutes, compared to an average of eight hours for paper-based procedures. Hai Phong and Ho Chi Minh City are the first localities to launch e-customs service for seaborne goods. The service will soon extend to other areas, including procedures in export processing zones, and will eventually be implemented in several locations throughout Vietnam in 2006.

Trading rights: The government of Vietnam currently maintains different regulations on trading rights for domestic and foreign-invested enterprises. Domestic Vietnam-owned enterprises are entitled to import in accordance with the business line(s) prescribed in their business registration certificates. These entities are not required to apply for an import license, except for goods for which the Ministry of Trade requires a non-automatic import license. Foreign-invested enterprises are not permitted to import goods freely in Vietnam.

Foreign-invested enterprises are allowed only to import goods used as inputs in the manufacturing process, as well as machinery, equipment, transportation means, and materials used in the construction and installation of their project in accordance with their investment license.

Under the terms of the BTA, beginning in December 2004, enterprises with capital directly invested by U.S. nationals and companies in production and manufacturing were to be able to engage in trading activities in most products and to enter into joint ventures with Vietnamese partners to engage in trading activities in all products, as long as the U.S. partner held no more than a 49 percent share in the venture. However, it was not until July 2005 that Vietnam established a mechanism for U.S. companies to benefit from these rights, and only as an interim measure until official regulations to implement BTA commitments are issued. Under the BTA, beginning in December 2008, U.S. companies will be able to establish wholly owned trading companies in Vietnam.

Taxes: In December 2002, the government issued a strategy for the automotive sector with a primary goal of significantly increasing the local content in domestically-produced vehicles. At the same time, the Ministry of Finance issued a decision to raise the import duty rates for automobiles produced from kits (CKDs). A joint campaign waged by affected foreign automobile companies and their representative Embassies resulted in postponement of the change. However, in May 2003, the National Assembly passed a Ministry of Finance proposal to impose a 10 percent VAT on all cars and increase the special consumption tax (SCT) on cars manufactured from CKDs starting in 2004. The SCT was increased from 5 percent to 24 percent in January 2004 and from 24 percent to 41 percent in January 2005. The changes to the tax and tariff policy were made years after foreign automobile manufacturers had committed significant resources to Vietnam and have contributed to lower sales and erosion in the profitability of foreign automakers in Vietnam.

In November 2005, the National Assembly passed a new Law on the Special Consumption Tax to address issues of national treatment discrimination on automobiles, cigarettes, distilled spirits, and fresh and draught beer, for which imports and locally made products are taxed at different rates. Unfortunately, the new law does not eliminate discrimination for beer and distilled spirits. The United States will continue to work with Vietnam to address this situation.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

Vietnam is currently working on the establishment of an SPS regime based on international standards, guidelines and recommendations. Its existing regime is based on CODEX and Food and Agriculture Organization (FAO)/World Health Organization (WHO) standards, the standards of regional or developed countries, or national standards. Vietnam has an inter-ministerial Working Group that coordinates SPS activities, and the Ministry of Agriculture and Rural Development (MARD) currently serves as a general inquiry point for information on SPS requirements. Specific responsibility for sanitary and phytosanitary controls, plant and animal quarantine, health quarantine and fisheries inspection is further assigned to other ministries and agencies.

In December 2003, the government banned imports of U.S. beef following the announcement of a case of Bovine Spongiform Encephalopathy (BSE) in the United States. On October 5, 2004, Vietnam's MARD issued a notice that it would allow imports of U.S.-origin boneless beef, with the conditions that the beef not originate from the state of Washington, and would only be consumed in hotels and restaurants. After much discussion, MARD lifted the restriction on the state of Washington on November 8, 2004. U.S. boneless beef from cattle less than 30 months old is now permitted entry into Vietnam for all end-users. In early January 2005, the first shipment of U.S. boneless beef arrived in Vietnam since the December 2003 ban.

In November 2005, Vietnam imposed a ban on all poultry and poultry product imports from all countries based on Avian Influenza (AI) concerns, a decision clearly inconsistent with international guidelines which reject restrictions on imports from countries free of AI. After intensive discussions with the United States, Vietnam modified the measure in January 2006 to allow imports of processed poultry products, while continuing the prohibition on imports of fresh poultry and eggs.

Vietnam also requires that all food products contain an expiration date beyond which food cannot be sold. For most products, no such restriction is necessary for food safety, and would thus seem inconsistent with accepted SPS practice. The United States is suggesting a "best-by" date with no restrictions on sales as an alternative when food safety is not an issue.

A new Vietnamese biotechnology law has provisions requiring labeling of all biotechnology products as well as shipment-by-shipment special import permits for biotechnology products. Although not yet implemented, these restrictions cause concern. The United States has raised such concerns in connection with Vietnam's WTO accession.

Standards and Technical Barriers to Trade (TBT)

The Ministry of Science and Technology (MOST) is the main ministry involved in standardization and quality requirements. The Directorate for Standards and Quality (STAMEQ) under the MOST is generally responsible for advising the government on issues related to standards, measurements, and quality. There are currently three levels of standards: national standards, sectoral standards, and company standards. The system is complex and not always transparent. Some items are subject to voluntary application, while other items are subject to regulation by the line ministries with direct responsibility for the product/sector.

Exporters and importers must obtain a permit from the line ministries or a receipt showing an inspection is in process for the controlled items to be permitted through customs.

On March 25, 2003 Vietnam formally established the offices of STAMEQ as its TBT enquiry and notification point. The TBT enquiry point is functioning and responding to queries from business. However, it will not begin to function as a notification point until Vietnam officially joins the WTO.

Pharmaceutical companies face significant barriers to trade. The Ministry of Health now prohibits the registration or re-registration for import of 11 pharmaceutical products (reduced from 23) that are produced domestically. In addition, pharmaceutical companies complain that the registration process for pharmaceuticals lacks transparency and that registrations need to be extended or re-submitted every five years. Guidelines and regulations are unclear and/or are not applied in a consistent manner. The Ministry of Health issues product visas for products for which companies want to conduct market surveys before doing registrations, with validity periods as short as one year.

The government requires that all pharmaceutical raw materials with an expiry period of less than three years be imported into Vietnam within six months of the date of manufacture. Additionally, foreign manufacturers of vaccines are required to conduct clinical trials in Vietnam before being permitted to register their vaccines for sale.

GOVERNMENT PROCUREMENT

Government procurement practices can be characterized as a multi-layered decision-making process often lacking transparency and efficiency. Although the Ministry of Finance allocates funds, various departments within the ministry or agency procuring the good or service determine government procurement needs. Competition for government procurement may take any of several forms: sole source direct negotiation, limited tender, open tender, appointed tender or special purchase. Currently, ministries and agencies have different rules on minimum values for the purchase of materials or equipment, which must be subject to competitive bidding. High-value or important contracts such as infrastructure (except World Bank, Asian Development Bank, UNDP, or bilateral official development assistance projects) require bid evaluation and selection, and are awarded by the Prime Minister's office or any other competent body. No consolidated or regular official listing of government tenders exists. However, some solicitations are announced in both Vietnamese and English-language newspapers.

EXPORT SUBSIDIES

Export credit is very limited in Vietnam. The Export Promotion Fund managed by the Ministry of Finance provides subsidies in the form of interest rate support (full or partial refund of interest incurred on ordinary bank loans), direct financial support (to first-time exporters, for exports to new markets, or for goods subject to major price fluctuations) and export rewards and bonuses. Since 1998, the average annual export reward provided to eligible enterprises has ranged from $2,900 to $4,710. Provision of export bonuses, originally targeted for exports of agricultural products, was expanded in 2002 to include non-agricultural products such as handicrafts, rattan and bamboo ware, plastic products and mechanical products. Since 2001, the Export Promotion Fund has also provided support to enterprises for expenditures on trade promotion activities.

Beginning in September 2001, the Development Assistance Fund has administered an export credit program that has provided short-term loan guarantees, medium and long-term investment loans, post-investment interest rate support and investment credit guarantees to domestic enterprises.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Vietnam is a member of World Intellectual Property Organization (WIPO) and is a signatory to the Paris Convention for the Protection of Industrial Property. It has acceded to the Patent Cooperation Treaty and the Madrid Agreement. On October 26 2004, Vietnam joined the Berne Convention on Protection for Literary and Artistic Works. Vietnam is also obligated, under the terms of the 1997 U.S.-Vietnam Bilateral Copyright Agreement, to provide U.S. copyrights protection on a national treatment basis in accordance with the terms of the Berne Convention. Vietnam acceded to the Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms in July 6, 2005. On January 12, 2006, Vietnam's membership in the the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite went into effect. Under the terms of the BTA, Vietnam was obligated by December 2003 to make its system for protecting IPR, including enforcement, consistent with the WTO TRIPS agreement. Considerable progress has been made over the past few years in establishing the legal framework for IPR protection. New IPR related legislation in 2005 included the Intellectual Property Law, Law on Publishing, Civil Code, Civil Procedure Code, Inter-Circular No.129/2004/TTLT/BTC-BKHCN Guiding Border Control Measures for Industrial Property of Import Export Goods, Circular 132/2004/TT-BTC Providing Guidelines for the Collection, Payment, Control and Utilization of Industrial Property Fees and Charges (abolishment of two-tier price), and Decision No.12/2005/QD-BNV on the establishment of the Vietnam Anti-Counterfeit and Intellectual Property Protection Association of Foreign-Invested Enterprises (VACIP).

The new Intellectual Property (IP) Law was approved by the National Assembly on November 19, 2005, and it will take effect on July 1, 2006. Vietnam intends to issue implementing regulations prior to this date. The new law helps bring Vietnam into greater compliance with international norms. Changes include providing new remedies, correcting inconsistencies with the Berne Convention, protecting data exclusivity, and extending protection to new media, such as the Internet, and satellite signals carrying encrypted programs.

However, many concerns remain, including overly broad provisions on compulsory licensing and terms for copyright protection that are less than those required by the BTA.

Enforcement of IPR protection remains extremely weak. The BTA requires the Government of Vietnam to provide expeditious remedies to prevent and deter infringement of IPR, including particular judicial and administrative procedures, prompt and effective provisional measures secured by sufficient evidence, and criminal procedures and penalties for willful trademark counterfeiting or infringement of copyrights or neighboring rights on a commercial scale. The Vietnamese government is considering how to address the piracy of television broadcast signals occurring in Vietnam.

Patent and Trademarks

Trademark registration in Vietnam is relatively straightforward, although infringement is widespread and enforcement of administrative orders and court decisions finding IPR infringement remains problematic. Vietnam's laws offer some protection for foreign patent holders, but infringement continues. The National Office of Intellectual Property (NOIP) under the Ministry of Science and Technology administers Vietnam's patent and trademark registration systems. NOIP has made significant progress in recent years to build adequate capacity to record and adjudicate patent and trademark claims, and is working with a number of foreign patent and trademark agencies to enhance its systems. Obtaining expeditious adjudication and administrative enforcement of patent and trademark violations remains difficult. Victims of infringement have encountered difficulties implementing NOIP enforcement decisions.

Vietnam’s new Law contains a provision for protecting the secrecy of test data when the law requires submission of such data as a condition for approving the marketing of pharmaceutical or agricultural chemical products. Currently, Vietnamese law lacks the legal provisions necessary to protect test data from unfair commercial use.

Copyrights

The Vietnam Office of Literary and Artistic Copyright is under the control and supervision of the Ministry of Culture and Information. Significant progress has been made in putting in place the legal framework required to protect copyrights, including those belonging to foreigners, but enforcement is almost non-existent. This is particularly true for certain categories of products, such as computer software, music compact discs (CDs), video compact discs (VCDs), and digital video discs (DVDs). Industry estimates of piracy rates for software, music, and videos run as high as 92 percent. Local police authorities often are slow to act on administrative orders issuing fines for infringement and enforcing court decisions. Following Vietnam’s accession to the Berne Convention and Geneva Convention, the Ministry of Culture and Information made an effort to tighten copyright regulations on foreign musical and theatrical works, as well as sound recordings. All event organizers must now obtain permission in writing from the copyright holders before performing their works.

SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of service sectors, including telecommunications, accounting, banking, and distribution services, and to apply MFN treatment to U.S. services suppliers in all sectors and for all modes of supply (with itemized exceptions). The BTA also incorporated the GATS (except Articles 3 and 4), Annex on Movement of Natural Persons, Annex on Telecommunications (except Articles 6 and 7), and the Telecommunications Reference Paper. Vietnam's commitments to liberalize market access on services are being phased in over specified time periods depending on the sector. In Diplomatic Note No. 3831/BKH-PC dated June 8, 2005, the Ministry of Planning and Investment confirmed that “Vietnam assures that investment licenses for investment projects in the services sector will be granted in line with the schedule and conditions stipulated in Annex G and Annex H of the Agreement.” The commitments by sector are as follows:

Accounting, Auditing, and Bookkeeping Services: To establish in Vietnam, a company must employ at least five persons with licenses to be a CPA in Vietnam who have practiced in Vietnam for more than one year. Until 2003, firms with U.S. equity were only allowed to supply services to foreign-invested enterprises and foreign-funded projects in Vietnam. Auditing firms can be established in the form of partnerships, private enterprises or foreign-invested enterprises. Foreign-invested auditing firms are permitted to set up branches in Vietnam. Accounting firms can be established in the form of limited liability companies, partnerships or private enterprises. Branching is not permitted.

Taxation Services: Until 2006, licenses will be granted on a case-by-case basis, and firms with U.S. equity are only allowed to supply services to foreign-invested enterprises and foreign-funded projects in Vietnam. Branching is not permitted.

Architectural, Engineering, and Computer Services: For a period of two years from the date of establishment and operation of their Vietnam operations, U.S.-owned companies can only provide services with foreign-invested enterprises in Vietnam. U.S. companies have to be legally registered in the United States. Branching is not permitted.

U.S. companies and companies with U.S. directly-invested capital are not permitted to carry out topographic, construction, geological, meteorological, and environmental investigations, or technical investigations for designing rural-urban construction plans, unless otherwise authorized by the Government of Vietnam.

Legal Services: Under the terms of the BTA, 100 percent equity ownership in companies, joint ventures, and branches is permitted. U.S. lawyers may not appear before Vietnam’s courts. However, U.S. firms may advise on Vietnam’s law if they hire persons with Vietnamese law degrees who satisfy the requirements applied to Vietnamese practitioners. After the BTA took effect, Vietnam’s law on lawyers was amended to provide that Vietnamese lawyers working for foreign firms may not appear before Vietnamese courts. Prior to the amendment, and at the time the BTA was signed, all Vietnamese lawyers were allowed to appear in court. Branches of law firms may receive a five-year renewable license. In July 2003, the government promulgated Decree 87 significantly reforming the regulatory framework for the operations of foreign law

practices and foreign law firms. The decree substantially broadened the scope of practice of foreign law firms in Vietnam. Foreign law practices are permitted to provide advice on foreign and international law in the areas of business, investment and commerce, which had been prohibited previously. By virtue of these reforms, foreign law firms may now offer a full range of legal services and employ Vietnamese lawyers, but may not appear before Vietnamese courts. A further revision to the law on lawyers is planned in 2006.

Advertising Services and Market Research: Vietnam has not agreed to provide market access for advertising services for wines and cigarettes or for the cross-border supply of market research services. U.S. companies in these sectors may initially only establish a commercial presence through joint ventures or business cooperation contracts with Vietnamese partners. U.S. investment is limited to 49 percent of the legal capital for the first five years under the BTA, 51 percent for years six and seven, and is unlimited after that. Vietnam has not agreed to ensure national treatment for the cross-border supply of market research services.

Management Consulting: U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts. After the BTA has been in effect for five years, enterprises with 100 percent U.S. ownership will be permitted.

Telecommunications Services: The provision of basic telecommunications services, value-added telecommunications services, and voice telephone services is only permitted through business cooperation contracts (BCC) with Vietnamese gateway operators. At least one Voice over Internet Protocol (VOIP) telecommunications service provider investing in a BCC with a local partner is reporting difficulties due to quota restrictions placed on its Vietnamese partner. According to the terms of the BTA, U.S. value-added telecommunications service providers may establish joint ventures with Vietnamese partners with up to 50 percent equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. However, Vietnam's law does not yet provide specifically for joint ventures in the telecom sector, and the government has not issued any regulations or other documents specifically authorizing joint ventures with U.S. companies or clarifying the procedures for such partnerships in the telecommunications sector. The Common Investment Law passed at the end of 2005, along with its implementing decrees, will implement these obligations. Four years after entry-into-force of the BTA, U.S. basic telecommunications service suppliers can establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. Six years after entry-into-force of the Agreement, U.S. voice telephone service providers may establish joint ventures with Vietnamese partners with up to 49 percent U.S equity ownership. The licensing for joint ventures in the sector will be implemented in accordance with commitments made in the BTA. As stated in a June 8, 2005 Ministry of Planning and Investment diplomatic note, licensing for investment projects in the service sector will be carried out in accordance with Annexes G and H of the BTA. To date, no U.S. or Vietnamese companies have applied for a joint venture license in the telecommunications sector.

Audiovisual Services: Vietnam has not agreed to provide market access or national treatment for cross-border supply or consumption abroad of audiovisual services. U.S. service suppliers may establish a commercial presence only through a business cooperation contract or joint venture

with a Vietnamese partner. U.S. ownership may not exceed 49 percent until December 2006, when the cap increases to 51 percent. The government strictly limits the importation of foreign films, videos, television and books. Numerous licensing, pricing and remittance restrictions exist. IPR protection for audio-visual products is ineffective, censorship is restrictive and rules are often applied in an ad-hoc manner. The National Assembly debated the draft Law on Cinema, which governs film production, importation, distribution, archiving, international cooperation in film making and petitions and punishments for violations during its November 2005 session. Assembly members criticized the law as too vague and not in line with a market-economy approach. The law will be redrafted by the Ministry of Culture and Information and resubmitted to the next National Assembly session in spring 2006.

Construction and Related Engineering Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of construction and related engineering services. Branches are not permitted. For the first three years after their establishment and operation, 100 percent U.S.-owned enterprises could only provide services to foreign-invested enterprises in Vietnam. U.S. companies must be legally registered for operation in the United States.

Decree 16 on management of construction projects in 2005 abolished the requirement that Joint Venture enterprises and Business Cooperation Contracts with state shares of at least 30 percent conduct tendering for construction projects in accordance with Vietnamese tendering rules.

Distribution Services: Under the BTA, Vietnam does not provide market access or national treatment for the cross-border supply of distribution services. In December 2004, U.S. service providers were able to establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity. However, it was not until July 2005 that the Government of Vietnam established a mechanism for U.S. companies to avail themselves of these rights. In December 2007, six years after entry into force of the BTA, U.S. ownership in joint ventures will be unlimited. In December 2008, 100-percent equity ownership by U.S. companies will be allowed. One retail outlet per firm was permitted upon entry-into-force of the BTA, while additional outlets will be considered on a case-by-case basis. For some agricultural and industrial products, market access in this sector is subject to additional limitations, which will be phased out over a period of three to five years from 2001. There are a limited number of products for which Vietnam did not commit to allow distribution services.

Educational Services: Vietnam will not provide market access or national treatment for the cross-border supply of educational services. U.S. companies may only establish a commercial presence through a joint venture until December 2008, when schools with 100-percent U.S.-invested capital may be established. Foreign teachers employed by educational units with U.S.-invested capital must have five years teaching experience and be recognized by the Ministry of Education.

Insurance Services: Vietnam has agreed to allow market access for the cross-border supply of insurance services to enterprises with foreign invested capital or foreigners working in Vietnam; reinvestment services; insurance services in international transportation; insurance brokering and reinsurance brokering services; and advisory, claim settlement, and risk assessment services.

Starting in 2005, U.S. companies can establish joint ventures with Vietnamese partners with up to 50 percent U.S. equity participation. After five years, 100-percent U.S.-invested companies may be established.

While the government has allowed, on a case-by-case basis, 100-percent foreign investment in both "life" and "non-life" insurance markets, access had been limited for U.S. service providers. Recently, three additional operating licenses, two for life insurance and one in the non-life sector, have been issued to U.S. insurers. These licenses allow 100-percent foreign ownership. Some joint ventures with Vietnamese companies have been allowed to convert to 100-percent foreign ownership, but the terms have been arbitrary and subject to the "ad hoc" approval of the government.

Companies with U.S.-invested capital cannot provide insurance for motor vehicle third party liability, for construction and installation, for oil and gas projects, or for projects and construction of high danger to public security and environment. Vietnam agreed to eliminate this limitation for joint ventures as of December 2004. After six years, this limitation will be eliminated for companies with 100-percent U.S. capital.

Until December 2005, any company with U.S. capital must reinsure part of its accepted liabilities (currently at a minimum rate of twenty percent) through the Reinsurance Company of Vietnam.

Banking: Vietnam has not agreed to provide market access or national treatment for the cross-border provision of banking services, except for financial information services and advisory, intermediation, and other auxiliary services. U.S. banks may establish a commercial presence through branches, joint ventures with Vietnamese banks, wholly-owned U.S. financial leasing companies or joint venture financial leasing companies with Vietnamese partners. Foreign banks can open full branches in both Hanoi and Ho Chi Minh City and operate as a single legal entity provided that each branch meets the capital requirement of $15 million. This capital requirement does not apply to Vietnamese bank branches.

Until 2005, the only legal form other than banks and leasing companies under which U.S. companies could provide financial services was through joint ventures with Vietnamese banks. In the BTA, Vietnam only committed to allow U.S. equity in joint venture banks of over 30 percent and less than 49 percent until December 2009, at which point 100 percent equity participation in subsidiary banks will be allowed. However, current Vietnamese law allows foreign banks to own up to 50 percent equity in joint venture banks. The amended Law on Credit Institutions will permit the establishment of 100 percent foreign-owned banks in advance of Vietnam's BTA obligations. The draft implementing decree for this amended law has been submitted to the government for consideration. Approval is expected in 2006.

The right of U.S. banks to accept Vietnamese currency deposits on the same basis as domestic banks is phased in over eight years (until 2009) for business clientele and ten years (until 2011) for retail depositors, at which point U.S. bank branches will be entitled to full national treatment. Vietnam is fulfilling this commitment by gradually allowing U.S. banks to increase the amount of deposits in Vietnamese Dong (i.e. the local currency) relative to the branch's legal paid-in capital with the ratio presently at 400 percent for legal persons and 350 percent for natural persons. (Prior to entry-into-force of the BTA, this ratio was 25 percent.) In addition, financial institutions with U.S. equity cannot issue credit cards on a national treatment basis until 2009. U.S. banks are now allowed to place automatic teller machines outside their offices on a national treatment basis.

Vietnam reserved the right to limit, on a national treatment basis, equity investment by U.S. banks in privatized Vietnamese state-owned banks.

U.S. bank branches, subsidiaries, or U.S.-Vietnam joint ventures must obtain a license to establish a commercial presence in Vietnam. Establishing a U.S.-Vietnam joint venture bank or a U.S. bank subsidiary requires minimum capital of $10 million. Authorized capital levels for state-owned commercial banks, joint-stock commercial banks, investment banks and joint venture banks are set at much lower levels.

Starting in 2005, financial institutions with 100 percent U.S. equity ownership are allowed to take an initial mortgage interest in land-use rights held by foreign-invested enterprises, and may use mortgages or land-use rights for the purpose of liquidation in case of default.

Establishing a wholly owned subsidiary of a U.S. financial leasing company or a joint venture leasing company requires three consecutive profitable years, and $5 million in legal capital.

Vietnam was not obligated, until December 2004, to provide national treatment with respect to access to central bank rediscounting, swap, and forward facilities. However, in 2003, the State Bank of Vietnam allowed one U.S. bank with branches in Vietnam (and some local banks) to provide swap service on a pilot basis. In May 2004, the State Bank of Vietnam issued Decision 648 allowing commercial banks to provide forward and swap facilities to their clients.

Licenses for foreign banks currently are limited in validity to only 20 years to 30 years and extensions (if any) are subject to the approval of the State Bank of Vietnam.

Non-banking Financial Services: The BTA allows 100 percent U.S. equity in financial leasing and in other leasing after 3 years. Government Decree 79 issued in 2002 permits the establishment and operation of finance companies in Vietnam, including joint venture and wholly foreign-owned finance companies.

Securities-Related Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of securities-related services. Non-bank U.S. securities service suppliers may only establish a commercial presence in Vietnam in the form of a representative office. In 2003 the government issued Decree 144 on Securities and Securities Trading, allowing foreign investment in securities investment funds and fund management

companies. Government Decision 238 issued in September 2005, which replaces Government Decision 146 issued in July 2003, maintains the limit on foreign capital contribution in joint venture security companies or joint venture fund management companies at 49 percent.

Health-Related Services: U.S. operators may provide services through the establishment of 100 percent U.S.-owned operations, joint ventures with Vietnamese partners or through business cooperation contracts. The minimum investment capital is $20 million for a hospital, $2 million for a polyclinic, and $1 million for a specialty unit.

Tourism and Travel-Related Services: U.S. companies may establish a commercial presence to provide hotel and restaurant services, provided that this is done in conjunction with investment for the construction of a hotel. The commercial presence may take the form of a business cooperation contract, a joint venture with Vietnamese partners, or a company with 100 percent U.S. equity investment.

There are limitations with respect to travel agencies and tour operators. U.S. companies supplying these services may establish a commercial presence only through a joint venture with Vietnamese partners and can initially only contribute 49 percent of the capital. Starting in January 2005, 51 percent participation was allowed, and all limitations will be abolished after five years. Tourist guides in joint ventures must be Vietnamese citizens. Service-supplying companies with U.S.-invested capital may only supply inbound service.

INVESTMENT BARRIERS

Currently, the Government of Vietnam maintains an extensive investment licensing process, which is characterized by stringent and time-consuming requirements that are frequently used to protect domestic interests, limit competition, and allocate foreign investment rights among various countries. Foreign businesses are permitted to remit profits, and share revenues from joint ventures, incomes from services and technology transfers, legally-owned capital, and properties in hard currency. Foreigners are also allowed to remit royalties and fees paid for the supply of technologies and services, principal and interest on loans obtained for business operations, and investment capital and other money and assets under their legitimate ownership.

The BTA provides a broad range of benefits to U.S. investors in Vietnam to enhance the investment environment for U.S. firms. Vietnamese investment obligations under the BTA include: providing national and most-favored-nation treatment, except where explicit exceptions have been made; ensuring compensation for expropriation consistent with international standards; and guaranteeing access to third-party investor-state dispute settlement. In practice, however, recognition and enforcement of foreign arbitral awards in Vietnam currently remains unpredictable.

In addition, Vietnam is obligated under the BTA to gradually discontinue application of any WTO Trade-Related Investment Measures (TRIMS) or performance requirements inconsistent with the WTO TRIMS Agreement. In November 2005, the National Assembly passed the Common Investment Law (CIL), which is aimed at creating a level playing field for foreign and domestic investors, and implementing Vietnam's commitments under the BTA and international

treaties. The CIL will enter into force on July 1, 2006. Implementing decrees for the CIL, which will provide operational details for investment in Vietnam, are currently in preparation. The U.S. government is actively monitoring this process.

Under the BTA, Vietnam is obligated to refrain from imposing requirements to transfer technology as a condition for the establishment, expansion, acquisition, management, conduct, or operation of an investment. Vietnam currently imposes a number of performance requirements with respect to the establishment of an investment and/or the receipt of a benefit or incentive. The CIL confirms that all remaining export performance requirements will be abolished. Vietnam retains restrictions on foreign shareholding in Vietnamese companies, although the ratio was raised from 30 percent to 49 percent in September 2005.

Decree 27 also now allows foreign investors to recruit Vietnamese workers directly, without having to go through labor recruitment agencies. However, in September 2003, Government Decree 105, drafted by the Ministry of Labor, Invalids and Social Affairs, established a regulation limiting all enterprises operating in Vietnam to employ foreign nationals at the lesser of: (1) a maximum rate of 3 percent of their total work force; or (2) 50 persons. Despite repeated complaints from the foreign business community, the government appears unwilling to lift the cap. In July 2005, Government Decree 93 announced amendments to Decree 105, including exempting certain sectors from limits on foreign workers and allowing some firms to apply to local governments to exceed the 3 percent/50 person cap.

However, Decree 93 reaffirmed the cap for most sectors, and it stated that firms in exempted sectors would need to apply to local governments in order to hire foreign workers.

In the BTA, Vietnam committed to gradually shift from an investment licensing regime to an investment registration regime for most sectors. According to Decree 27, the following types of investment are no longer subject to investment licensing: investment projects that export 80 percent of products; investments in "encouraged" or "specially encouraged" projects located in industrial zones (with some exceptions); and investment in the manufacturing sector with a value of up to $5 million in investment capital. Under the new CIL, projects with foreign invested capital of under 300 billion Vietnamese Dong (approximately $19 million), excluding projects on the list of sectors where investment is subject to conditions, are eligible for registration. Projects which must be evaluated for licensing include: projects on the list of sectors where investment is subject to conditions, or projects with invested capital of 300 billion Vietnamese Dong or more.

Investment Stock: According to official Vietnamese statistics, the stock of U.S. foreign direct investment (FDI) in Vietnam in 2005 was $728 million, up from $721 million in 2004. However, a recent joint study by the Vietnamese government and the U.S.- funded STAR program took a closer look at U.S. investment and found that when investment from U.S. subsidiaries located in third countries is included, U.S. investment in Vietnam totals $2.6 billion. In 2004, U.S. firms were the largest foreign investors in terms of implemented capital, amounting to $531 million or 19 percent of total investment in Vietnam and above investment from Japan, Korea, Singapore and Taiwan.

The study also found that U.S.-related FDI has increased strongly since the U.S.-Vietnam BTA went into effect, growing by an average of 27 percent a year from 2002 through 2004 compared to just around 3 percent a year from 1996 to 2001.

ELECTRONIC COMMERCE

To date, electronic commerce has not exhibited much growth in Vietnam. Obstacles to its development include: the low number of Internet subscribers in-country, obtrusive firewalls, limited bandwidth and other problems with the Internet infrastructure, limitations of the financial system (including the low number of credit cards in use), and regulatory barriers. However, recent developments to facilitate the growth of electronic commerce in Vietnam include legal acceptance of e-signatures and implementation of the electronic inter-bank transaction system. The number of online transactions has been increasing. The e-transaction law was passed on November 19, 2005 and will take effect on March 1, 2006.

Vietnam continues to attempt to keep close control of all websites established in Vietnam. In October 2002, the Government passed a new regulation on the establishment and modification of websites. The regulation requires domestic and foreign agencies, organizations, and enterprises to obtain a license from the Ministry of Culture and Information (MOCI) before establishing new websites. The Ministry then has 30 days to make a decision on granting the license. The regulation also requires diplomatic and other foreign entities to obtain written approval from the Ministry of Foreign Affairs before requesting a license from MOCI.

Vietnam may also require organizations to request permission from MOCI before making changes to the content of their existing websites based on licensing requirements in the regulation.

OTHER BARRIERS

U.S., other foreign, as well as domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. In 2005, Vietnam scored a 2.6 out of a possible 10 points on Transparency International's Corruption Perception Index. Transparency International considers a score of less than 3 to be an indication of severe corruption. In large part due to a lack of transparency, accountability, and media freedom, widespread official corruption and inefficient bureaucracy remain serious problems that even the Government of Vietnam admit they must address on an urgent basis. Competition among government agencies for control over business and investments has created confusing overlapping jurisdictions and bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and woefully inadequate systems for holding officials accountable for their actions compound the problems.

Implementation of the Government of Vietnam's public administration reform program, developed with the assistance of the World Bank, as well as Vietnam's obligations under the transparency provisions of the BTA promise some improvement in the situation in the medium to long term, but it appears unlikely there will be much improvement in the near term. The U.S. Government, through the Department of Commerce, is proposing initiatives to help improve the business environment in Vietnam through a good corporate governance program in cooperation with the private sector.

Vietnam maintains a policy of bias favoring domestic-market oriented industries, particularly those dominated by state-owned enterprises. Although all registered firms, regardless of ownership, can engage legally in foreign trade, barriers exist that discourage trading by non-state enterprises. Monopolies in production result in monopolies in trading, as in the case of coal. The tariff structure also favors domestic industries, particularly those dominated by state-owned enterprises. Tariffs are on items predominantly used by those enterprises as inputs are lower.

In April 2003, the United States and Vietnam concluded a textile trade agreement. The textile agreement assists U.S. domestic manufacturers by including Vietnam within the global textile quota regime and helps our importers by providing certainty and avoiding the unpredictability of frequent, random, unilateral limits. The agreement also reduces tariffs on a range of U.S. textile and garment imports from between 7 percent and 30 percent in 2003 to between 5 percent and 20 percent in 2005. A number of decisions issued by the Ministry of Finance between 2003 and 2005 implemented these tariff reductions. This agreement also contains a labor provision. Both parties reaffirm their commitments as members of the International Labor Organization and also indicate their support for implementing codes of corporate social responsibility as one way of improving working conditions in the textile sector. The agreement calls for a review of progress on the goal of improving working conditions in the textile sector through consultations between the U.S. Department of Labor and Vietnam’s Ministry of Labor, Invalids, and Social Affairs. On December 9, 2005, the agreement was extended through 2006.